

Annex 1: Guidance on penalties for contempt

GUIDANCE IN RELATION TO PENALTIES FOR CONTEMPT FOR BREACH OF ORDERS MADE UNDER PART 1 OF THE ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

Introduction

This guideline is applicable for the imposition of penalties for breach of an order made under the Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”).

The exercise of punishing for contempt in the civil courts is different from sentencing within criminal proceedings. Having found that the contemnor is in contempt of court, a judge must then consider the question of a penalty, rather than sentencing for an offence. However, the core principles of criminal sentencing should be applied and the following definitive guidelines produced by the Sentencing Council for use in the criminal courts may also be relevant for a civil judge faced with a breach of an order under the 2014 Act:

- *Breach Offences: Definitive Guideline* (operative from 1 October 2018)³³⁶
- *Imposition of Community and Custodial sentences: Definitive Guideline*
- *Reduction in Sentence for a Guilty Plea: Definitive Guideline*
- *Offences Taken Into Consideration and Totality: Definitive Guideline*

Other definitive guidelines, such as those in relation to assault and drugs, may be of relevance if the breach also consists of commission of a substantive criminal offence.

This guideline applies only to a respondent aged 18 and older.

For more a more detailed analysis of penalties in respect of breaches under the 2014 Act see the Civil Justice Council Report.

The objective of a penalty

There are three objectives to be considered when dealing with the breach of an order under the 2014 Act:

- The first is punishment for breach of an order of the court.
- The second is to secure future compliance with the court’s orders if possible.
- The third is rehabilitation, which is a natural companion to the second objective.

Penalty options

³³⁶ It is important to note that this guideline is for criminal offences only and was not intended to cover sentencing at committals for a breach of an order made under the 2014 Act. See p. 27 for the sentences for the breach of a criminal behaviour order (which carries a maximum sentence of 5 years as opposed to the maximum of 2 years when sentencing for breaches of orders under the 2014 Act) and p. 56.

When dealing with a contemnor for a breach of an order under the 2014 Act the court has the following five options:

- An immediate order for committal to prison.
- A suspended order for committal to prison.
- Adjourning the consideration of a penalty, if appropriate with amendment of the injunction to include a positive requirement.
- A fine.
- No order.

Section 14 of the Contempt of Court Act 1981 sets out that the **maximum term** that can be imposed on any occasion is 2 years' imprisonment. Importantly this is not a maximum of 2 years per breach, but a maximum of 2 years on any occasion. This is so even if an element of the penalty imposed is the activation of a suspended order for committal passed on a previous occasion.

Custody must be reserved as a punishment for the most serious offences. A custodial penalty must not be imposed unless the breach or the combination of the breach and one or more breaches associated with it, was so serious that only a custodial penalty can be justified.³³⁷

A penalty must be considered for each breach found proved, and the terms of imprisonment may be concurrent or consecutive to each other. It is a basic principle of sentencing that consideration must be given to the **totality** of the penalties imposed, simply adding up what may well be entirely appropriate penalties for each individual breach may lead to an excessive total that is wrong in principle. **The appropriate period of custody must be the least period which the seriousness of the respondent's breaches can properly justify.**

One half of the custodial term will be served in prison before automatic release.³³⁸ As a result particular consideration should be given to the practical effect of short custodial terms.³³⁹

Unlike the sentences imposed in the criminal courts, **time spent on remand is not automatically deducted from a term of imprisonment** imposed on a committal for contempt of court. When giving credit for time spend on remand, double the period should be deducted from the term which would have been imposed (as a custodial term of 10 days will result in 5 days served; so a period of 5 days on remand is equivalent to 10 days off the term).

The court can suspend an order for committal to prison. **For a suspended order to be an available option the custody threshold must have been passed**, i.e. a judge must be clear that an immediate custodial penalty would have been imposed had the power to suspend not been available. A suspended custodial order is not a step or stage before a custodial sentence is justified.

³³⁷ There is a specific sentencing guideline in relation to custodial sentences: *Imposition of Community and Custodial Sentences: Definitive Guideline*.

³³⁸ See the Criminal Justice Act 2003 section 258. As a result, if the custodial term is expressed in days it is desirable that it should be an even period of days.

³³⁹ If a prisoner is due for release at a weekend, it will take place on the preceding Friday: prisons do not release at weekends.

The court should decide the appropriate length of the custodial term before considering if it is appropriate to suspend it. **The period of suspension (the operational period) must not be disproportionate to the term or to the gravity of the conduct.** It should ordinarily be for a fixed period (or until the expiry of the injunction if that is earlier than the period that would otherwise have been imposed).

The court has **no power to order the equivalent of a community sentence.**

A criminal court can defer passing sentence for up to six months and may impose any conditions during the period of deferment that it considers appropriate. The purpose of **deferment** is to enable the court to have regard to the offender's conduct after conviction or any change in his or her circumstances, including the extent to which the offender has complied with any requirements imposed by the court. **A civil court can achieve the same aims by adjourning the consideration of penalty** ("adjourned consideration") to enable regard to be had to the respondent's future conduct, including, if appropriate, on terms, effected by changing/adding to the terms of the underlying injunction (including through adding a positive requirement). Ordinarily the adjournment should be for a finite period and to a fixed hearing date (preferably before the same judge). Although there is no set time limit the adjournment should **not normally be in excess of 6 months**. The court should also give a clear indication of the penalty it would have imposed if it had decided not to adjourn and must ensure that the respondent clearly understands the consequences of failure to comply with terms of the order.

If either a suspended committal order or an adjourned consideration has a positive requirement forming part of an amended order consideration should be given to **ordering a review** after a suitable period to consider progress/compliance.

A stepped approach

To arrive at an appropriate penalty for the contempt a stepped approach is necessary.

The first step is determining the seriousness of the breach/es. That depends upon assessments of culpability and harm.

The second step is to use the table set out below to identify the "starting point" and "category range". The table assumes that breaches have been proved at a hearing.³⁴⁰

The penalty is then adjusted to take account of other factors. There is a non-exhaustive list of additional factual elements, some aggravating and some mitigating, which should be considered.

The third step is for a reduction to reflect any admission/s of the breach/es. At this stage the *Reduction in Sentence for a Guilty Plea: Definitive Guideline* (effective from 1 June 2017) is relevant.

The fourth step is the totality principle. The *Offences Taken Into Consideration and Totality: Definitive Guideline* (effective from June 2012) provides assistance. When imposing penalties for a

³⁴⁰ Credit for admitting breaches is taken into consideration only at step four in the decision-making process, after the appropriate sentence has been identified.

number of breaches (or when there has been a breach of a suspended order for committal and further breaches) the total penalty should reflect all the offending behaviour and be just and proportionate. There is guidance for the criminal courts as to when concurrent and consecutive sentences are appropriate. The result at this stage should be the shortest period of custody which the seriousness of the offender's breaches can properly justify.

The **fifth step** is to consider whether any order for committal to prison should be suspended.

The **sixth step** is to take into account any time spent in custody on remand.

The **seventh step** is to give reasons for, and explain the effect of, the penalty imposed.

The **eighth step** is to consider, if a positive requirement has been imposed through variation of the order, if there should there be a review hearing to assess progress/compliance.

Step one

Determining the relevant categories of culpability and harm.

Culpability:

There are three levels:

- A High culpability; very serious breach or persistent serious breaches
- B Deliberate breach falling between A and C
- C Lower culpability; Minor breach/es

Examples of category A may include, but are not limited to:

Violence or threat of serious violence
Significant degree of premeditation
Intention to engage in more serious behaviour than actually achieved (e.g. where the respondent was arrested or disturbed before able to complete intended behaviour)

Examples of category C may include, but are not limited to:

No intention to cause harm or distress and no harm or distress reasonably foreseeable from the breach
Breach is incidental to some other lawful activity (e.g. entering a prohibited area to use a shortcut)
Lack of premeditation or inadvertent breach

Harm:

The level of harm is determined by weighing up all the factors of the case to determine the harm that was caused or was at risk of being caused by the breach/es.

In assessing any risk of harm posed by the breach/es, consideration should be given to the facts or activity which led to the order being made.

- Category 1 Breach causes very serious harm/distress
- Category 2 Cases falling between categories 1 and 3
- Category 3 Breach causes little or no harm/distress

Examples of category 1 may include, but are not limited to:

Injury or threat of serious injury
Significant damage to property
Elderly or vulnerable person affected by breach/es
Causes a resident to move home

Examples of category 3 may include, but are not limited to:

No person(s) actually inconvenienced
Breach comprises mere presence in unauthorised location other than in circumstances comprising greater harm

Step two

Having determined the categories at step one, the court should use the corresponding starting point to reach a preliminary penalty.

Harm	Culpability		
	A	B	C
Category 1	<p><i>Starting point:</i> 6 months</p> <p><i>Category range:</i> 8 weeks to 18 months</p>	<p><i>Starting point:</i> 3 months</p> <p><i>Category range:</i> adjourned consideration to 6 months</p>	<p><i>Starting point:</i> 1 month</p> <p><i>Category range:</i> adjourned consideration to 3 months</p>
Category 2	<p><i>Starting point:</i> 3 months</p> <p><i>Category range:</i> adjourned consideration to 6 months</p>	<p><i>Starting point:</i> 1 month</p> <p><i>Category range:</i> adjourned consideration to 3 months</p>	<p><i>Starting point:</i> adjourned consideration</p> <p><i>Category range:</i> adjourned consideration to 1 month</p>
Category 3	<p><i>Starting point:</i> 1 month</p> <p><i>Category range:</i> adjourned consideration to 3 months</p>	<p><i>Starting point:</i> adjourned consideration</p> <p><i>Category range:</i> adjourned consideration to 1 month</p>	<p><i>Starting point:</i> adjourned consideration</p> <p><i>Category range:</i> No order/fine to two weeks</p>

The preliminary penalty may then be adjusted to take account of any additional factual elements providing the context of the breach/es and factors relating to the respondent.

A non-exhaustive list of additional factual elements is set out below. Consideration must be given to whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. Care must be taken not to “double count” factors i.e. factors should be ignored if already taken into account in arriving at the preliminary penalty. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Examples of factors increasing seriousness:

- history of disobedience of court orders
- breach committed shortly after the order was made
- targeting of a person the order was made to protect or a witness in the original proceedings
- victim, or protected subject of order breached, is particularly vulnerable due to age, disability, culture, religion, language, or other factors.

Examples of factors reducing seriousness or reflecting personal mitigation:

- breach committed after long period of compliance
- genuine remorse
- age and/or lack of maturity where it affects the responsibility of the respondent
- ill health, mental disorder or learning disability
- sole or primary carer for dependent relatives.

Step three

Reduction in the penalty for any admissions made. The court should take account of any reduction for admitting the breach/es in accordance with the *Reduction in Sentence for a Guilty Plea: Definitive Guideline*.

Step four

If penalties are being imposed for more than one breach, or where the respondent is in breach of a suspended committal order,³⁴¹ consideration must be given to whether the total penalty is just and proportionate to the breach/es in accordance with the *Offences Taken Into Consideration and Totality: Definitive Guideline*.

Step five

If the penalty is a custodial term, consideration must be given to whether it should be suspended. The following factors should be weighed in considering whether it is possible to suspend the committal order:

(a) Factors indicating that it would **not** be appropriate to suspend a custodial order:

- The respondent presents a risk/danger to others.
- Appropriate punishment can only be achieved by immediate custody.
- History of poor compliance with court orders.

³⁴¹ See breach guideline, p. 7 for the relevant principles to be applied.

(b) Factors indicating that it **may** be appropriate to suspend the committal order:

- Realistic prospect of rehabilitation/addressing the underlying causes of anti-social behaviour.
- Strong personal mitigation.
- Immediate custody will result in significant harmful impact upon others.

The period of suspension (the operational period) must not be disproportionate to the custodial term or to the gravity of the conduct. It should ordinarily be for a fixed period (or until the expiry of the injunction if that is earlier than the period that would otherwise have been imposed).

Steps/further steps to address underlying causes of the anti-social behaviour can be effected by changing/adding to the terms of the underlying injunction (including through adding a positive requirement³⁴²).

Step six

Consideration must be given to adjusting an immediate custodial term to reflect for time spent on remand. Unlike in the criminal courts, this will not happen automatically, so unless it is specifically addressed no account will be taken of any period on remand.

Step seven

Using plain language, reasons should be given for the penalty imposed, and also:

- the effect of the penalty i.e. how long will actually be served in prison
- the right to apply to purge contempt
- that permission to appeal is not needed
- the time limit for and route of appeal.

Step eight

If a positive requirement has been imposed through variation of the order, consideration should be given to ordering a review after a suitable period to assess compliance/progress.³⁴³

³⁴² Subject to the procedural requirements for the variation of the injunction and the ordering of a positive requirement set out in sections 3 and 8 of the 2014 Act.

³⁴³ The review, which could be after a month or six weeks depending on the nature of the requirement, could consist of consideration of a report by the person supervising compliance with the requirement/s.

Annex 2: Revised N79

Case No.:

IN THE COUNTY COURT AT
SITTING AT [insert address]
ON [insert date]
BEFORE [insert name of judge]
BETWEEN

<i>Insert name of claimant</i>

and

<i>Insert name of defendant</i>

- On [insert date] the court made injunction orders against the defendant under
 - the Anti-Social Behaviour Crime and Policing Act 2014
 - the Policing and Crime Act 2019
 - the Protection from Harassment Act 1997
 (*delete as appropriate*)

[with powers of arrest attached to paragraphs.....]

The order was modified and amended by orders on [insert dates] (*delete as applicable*)

- On [insert date] the defendant was brought before the court further to [having been arrested under] [the power of arrest] [a warrant of arrest issued by the court on [insert date]] [served with an application notice for their committal to prison for contempt of court] (*delete as applicable*).
for allegedly disobeying the order which provided that the defendant must not:

	<i>Insert part of order allegedly breached</i>
1.	
2.	

and the court [heard the allegations] [listed the allegations for hearing] [and remanded the defendant on bail/ in custody] (*delete as applicable*) until [please insert date]

- The defendant was informed of the entitlement to legal aid and how to try and find local practitioners who may undertake publicly-funded work.
- The court also ordered (*delete or insert the terms of an order made*)

[Signed by the judge]

5. I [insert name of officer] gave a copy of this form to the respondent as soon as practicable after the hearing

[Signed]

6. On [insert date] having heard the defendant /counsel for the defendant/ solicitor for the defendant *(delete as applicable)* and having considered

(a) the following evidence

	<i>Witness statement and/or oral evidence of</i>
1.	
2.	

[and/or]

(b) admissions made by the defendant in open court

(delete as applicable)

the court found it was satisfied so that it was sure that the defendant had disobeyed the order by

	<i>Insert breach</i>
1.	
2.	

and the court imposed the following sentence(s) for those breach(es)

	<i>Insert sentence(s)</i>
1.	
2.	

7. Accordingly it was ordered that

Insert name of defendant

be committed for contempt to prison for a [total] period of [insert days] [suspended until [insert date]] on condition that *[insert conditions]* *(delete as applicable)*.

8. The court made no order/ the following order as to costs *(delete and/or insert as appropriate)*

9. The defendant was informed of
 - (a) the effect of the sentence;³⁴⁴
 - (b) the right to apply to purge contempt;³⁴⁵
 - (c) the right³⁴⁶ to appeal without permission, time limit³⁴⁷ for and the route of appeal.

10. A written judgment was handed down/a transcript of the committal decision was ordered³⁴⁸ to be prepared on an expedited basis (*delete as appropriate*).

Note to court staff

Copies of the written judgment/transcript of judgment shall be provided to the parties and the national media via the CopyDirect service. Copies shall also be supplied to BAILII and to the Judicial Office at judicialwebupdates@judiciary.gsi.gov.uk for publication on their websites as soon as reasonably practicable.³⁴⁹

[Signed by the judge]

11. I (*name of officer*) certify that I served the defendant with a copy of this order by:
 - (a) delivery by hand to the defendant before he/she was taken from the court building or other place of arrest to the place of detention
 - (b) delivery by hand to the defendant at [time] on [date] 20.... at [place] (*delete as appropriate*).

[Signed]

A copy of this form:

- (a) must be retained on the court file;
- (b) is to be sent to the national media via the CopyDirect service at alerts.service@pressassociation.com and to the Judicial Office at

³⁴⁴ Time on remand is not deducted from the sentence imposed unless the judge has specifically ordered that it should be. The respondent will ordinarily be released as soon as he/she has served one half of the sentence imposed.

³⁴⁵ Any person sentenced for contempt of court, has the right, if he/she can establish genuine regret and a genuine promise as to future conduct, to make application to the court which sentenced him/her to purge the contempt. The procedural requirements for the discharge of a person in custody are set out in the CPR 81.10 and CPR 23 and should be followed.

³⁴⁶ An appeal against a committal order (including a suspended committal order) does not require permission to appeal. Any other form of order in contempt proceedings e.g. a fine or an order that the respondent pay the applicant's costs is not "a committal order" and permission to appeal is required.

³⁴⁷ An application to appeal must be filed at the Court of Appeal within 21 days after the decision unless the judge specifies a shorter or longer period.

³⁴⁸ If either an order for committal or a suspended committal order has been made.

³⁴⁹ See Practice Direction in respect of committals for contempt of court-open court: 26 March 2015 paragraphs 14 and 15; applies if either an order for committal or a suspended committal order has been made.

judicialwebupdates@judiciary.gsi.gov.uk for publication on the website of the Judiciary of England and Wales.

Annex 3: List of abbreviations

A&E	Accident and Emergency
ABC	Acceptable Behaviour Contract
ADTJ	Alcohol, Drugs, Tobacco and Justice
ASB	Anti-Social Behaviour
ASBCPA	Anti-Social Behaviour Crime and Policing Act
ASBI	Anti-Social Behaviour Injunctions
ASBO	Anti-Social Behaviour Order
ATRs	Alcohol Treatment Requirements
BAILII	British and Irish Legal Information Institute
CBO	Criminal Behaviour Order
CFA	Conditional Fee Arrangement
CHaRMM	Community Harm and Risk Management Meetings
CI	Criminal Injunction
CJC	Civil Justice Council
CLA	Civil Legal Advice Service
CMARACs	Community Multi-Agency Risk Assessment Conferences
CPN	Community Protection Notice
CPR	Civil Procedure Rules
CPRC	Civil Procedure Rule Committee
CPS	Crown Prosecution Service
CSP	Community Safety Partnerships
DCJ	Designated Civil Judge
ECHR	European Convention of Human Rights
EWCA Civ	England and Wales Court of Appeal (Civil division)
EWHC	England and Wales High Court
HMCTS	Her Majesty's Courts and Tribunals Services
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act
L&D	NHS Liaison and Diversion Service
MARACs	Multi-Agency Risk Assessment Conferences
MASH	Multi-Agency Safeguarding Hubs

MEAM	Making Every Adult Matter
MHTRs	Mental Health Treatment Requirements
MoJ	Ministry of Justice
MOPAC	Mayor's Office for Policing and Crime
NHS	National Health Service
OASys	Offender Assessment System
OS	Official Solicitor
PA	Personal Adviser
PCCSA	Powers of Criminal Courts (Sentencing) Act
PD	Practice Direction
PND	Penalty Notices for Disorder
PSPO	Public Spaces Protection Order
PSR	Pre-Sentence Report
SDR	Standard Delivery Report
SFR	Short Format Report
SRO	Sexual Risk Order
YJB	Youth Justice Board
YJCEA	Youth Justice and Criminal Evidence Act
YJS	Youth Justice Service
YOT	Youth Offending Team